

LEGISLATIVE REPORT

as of 1/21/2020

Appropriations:

Governor Parson sent his proposed budget to the Missouri General Assembly 1/15/2020. The Governor's recommended appropriation for the PSTIF Board and Claims virtually mirrored the Board's request (an increase of \$6,430 for COLA). Board staff will continue to closely monitor and participate in the budget process.

PSTIF Bill – SB 856 and HB 2215

Over the last several months, the Board's staff and attorneys worked diligently to craft a bill that makes a number of changes to the statutes that govern the Board and the PSTIF. The heart of the bill is language which sets defense cost of third party claims outside the \$1m coverage limit. As you recall, this change is in response to concerns voiced by the EPA and will ensure defense costs do not erode the coverage limit available to our participants for cleanup and third party damages.

There are also changes in the bill that clarify the law regarding the Board's standing and processes. These changes are largely a result of suggestions by our attorneys and the Attorney General's Office to rectify issues that have come up in the course of lawsuits. These items include the following clarifications: PSTIF is not regulated as an insurance company; statutes relating to the State Legal Expense Fund and sovereign immunity apply to the board and its staff; PSTIF is not an express trust (governed by the Missouri Uniform Trust Code); the board's claim appeal procedure is valid; documents relating to liability are not open records; and the board's procedure for assigning claim benefits to a successor owner is valid.

There are a number of other changes that clean up obsolete provisions and clarify others. A bulleted summary of the bill and the bill text are enclosed. We are actively inviting interested parties to identify any concerns or questions about the bill.

We have secured two very strong sponsors, Senator Wieland (R) and Representative Kolkmeyer (R) who will champion the bill through their respective chambers.

Action requested: It is requested that the Board formally authorize its staff to support and lobby for passage of these bills, and that Board members contact their legislators and express their support for the bills.

Other Bills of Interest:

Bills to limit or prescribe actions by state agencies:

- **Requires DNR to assist small business (25 or fewer FTEs) permit applicants with the permitting process. HB1804 (Pietzman).**
- **Prohibits the enforcement of any federal rule or regulation promulgated by the US EPA unless the rule or regulation is approved by the General Assembly. HB1801 (Morris)**
- **Requires an audit of all state agencies every 4 years. HB2126 (Riggs)**

Bills affecting state boards/commissions and/or their individual members:

- **Require the Governor to maintain and regularly update a list of state boards, commissions, committees, councils, etc. that contain members appointed by the Governor. HB1266 (Bangert).**
- **Prohibits the Hazardous Waste Management Commission from promulgating rules stricter than or not addressed by the federal Resource Conservation and Recovery Act. Prohibit the HW Mgmt Commission and DNR from promulgating rules stricter than or not addressed by the federal Comprehensive Environmental Response, Compensation, and Liability Act and any existing regs that are stricter shall be null and void. Also repeals Commission's authority to retain, modify, or repeal certain rules. SB892 (Burlison)**

Bills related to liability, "tort reform," arbitration, insurance companies, or the Sunshine Law:

- **Modifies provisions related to punitive damages including: punitive damages shall only be awarded if the plaintive proves intent; punitive damages shall not be included in initial pleaded and may only be filed with permission of the court no later than 120 days prior to final pretrial conference; and a few other provisions. Includes state sovereign immunity from punitive judgements. SB591 (White)**
- **Provides that any arbitration award or judgement shall not be binding on any liability insurer unless that insurer had agreed in writing to the arbitration proceeding. (NOTE: While the PSTIF Board is not an insurance company, the**

definition of “insurer” in these bills is broad and could be interpreted to include it.) HB2049 (Coleman) and SB726 (Luetkemeyer) – the language of these two bills varies slightly but they are fundamentally the same.

- **Requires product liability claims be made within 15 years of the sale or lease of the product, with exceptions.** HB1596 (Trent) and SB555 (Riddle)
- **Amends the definition of “public record” to include social media pages, including personal pages of some employees. Expands requirements for preservation of communications.** HB1363 (Ellebracht)
- **Forbids any elected or appointed member of a public governmental body or any staff from using encryption software that automatically destructs messages sent.** HB2069 (Dogan)

Other bills of interest to PSTIF and/or our participants:

- **“Missouri-Made Fuels Act” – specifies that all diesel fuel offered for sale April – October in MO must contain at least 5% biodiesel by volume beginning in 2022, ramping up to 20% by 2024.** HB1858 (Haffner), SB568 (Hoskins)
- **Requires payment to contractor within 15 days of payment request with exceptions (including 3rd party claims).** HB1836 (Green)
- **Reclassifies stationary property used for transportation or storage of liquid and gaseous products (including petroleum) as depreciable tangible personal property.** SB785 (Koenig)
- **Adds penalties for failing to mark underground facilities accurately or in a timely manner once being notified that excavation will take place.** HB1970 (Griesheimer)
- **Raises fuel Taxes** – Again this year there are many bills and joint resolutions in both chambers regarding increasing fuel taxes in one fashion or another.



PSTIF Bill

History:

30 years. 6,612 locations insured. 7300+ claims, 90.4% of them closed. \$300+ million paid. 121 claims w/ third party demands; 34 required legal defense. Not a single cleanup has remained unfinished because PSTIF benefits were exhausted.

Problems:

1. EPA & DNR object to legal defense as part of \$1 million per occurrence coverage.
2. Board members battered by frivolous litigation.

Solution: PSTIF Board is asking General Assembly to pass a bill:

1. Expand coverage to \$1 million per occurrence for cleanup and third party damages, w/ board authority to specify additional coverage for legal defense.
2. Clarify that:
 - PSTIF is not regulated as an insurance company under Chapter 375, RSMo;
 - Statutes relating to the State Legal Expense Fund and sovereign immunity apply to the board and its staff in the same way as to all state agencies;
 - The PSTIF is not an express trust;
 - The board's claim appeal procedure is valid;
 - Documents relating to liability are not open records; and
 - The board's procedure for assigning claim benefits to a successor owner is valid.
3. Annually notify legislature of Fund's runout liabilities and cash balance after the sunset date.
4. Authorize the board to subrogate for a contingency fee greater than 10%.
5. Eliminate the board's obligation to enforce EPA rules.
6. Clarify that airline companies and railroads, which do not pay the transport load fee, cannot benefit from the PSTIF.
7. Clarify that a tank owner serving on the board must recuse himself/herself from decisions regarding his/her claims.
8. Change board member criteria so more people qualify for the "100 tanks or more" seat and clarify that the tank owner criteria refer to tanks in Missouri.

SECOND REGULAR SESSION

HOUSE BILL NO. 2215

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KOLKMEYER.

4958H.01I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 319.129, 319.131, and 319.133, RSMo, and to enact in lieu thereof three new sections relating to the petroleum storage tank insurance fund.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 319.129, 319.131, and 319.133, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 319.129, 319.131, and 319.133, to read as follows:

319.129. 1. There is hereby created a special trust fund to be known as the "Petroleum Storage Tank Insurance Fund" within the state treasury which shall be the successor to the underground storage tank insurance fund, **and which shall be administered as required by this chapter and not in the manner of an express trust.** Moneys in such special trust fund shall not be deemed to be state funds **and shall not be deemed insurance for the purposes of chapter 375.** Notwithstanding the provisions of section 33.080 to the contrary, moneys in the fund shall not be transferred to general revenue at the end of each biennium.

2. ~~[The owner or operator of any underground storage tank, including the state of Missouri and its political subdivisions and public transportation systems, in service on August 28, 1989, shall submit to the department a fee of one hundred dollars per tank on or before December 31, 1989.]~~ The owner or operator of any underground storage tank who seeks to participate in the petroleum storage tank insurance fund, including the state of Missouri and its political subdivisions and public transportation systems, and whose underground storage tank is brought into service after August 28, 1998, shall transmit one hundred dollars per tank to the board with his or her initial application. Such amount shall be a one-time payment, and shall be in addition to the payment required by section 319.133. The owner or operator of any

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 aboveground storage tank regulated by this chapter, including the state of Missouri and its
18 political subdivisions and public transportation systems, who seeks to participate in the
19 petroleum storage tank insurance fund, shall transmit one hundred dollars per tank to the board
20 with his or her initial application. Such amount shall be a one-time payment and shall be in
21 addition to the payment required by section 319.133. Moneys received pursuant to this section
22 shall be transmitted to the director of revenue for deposit in the petroleum storage tank insurance
23 fund.

24 3. The state treasurer may deposit moneys in the fund in any of the qualified depositories
25 of the state. All such deposits shall be secured in a manner and upon the terms as are provided
26 by law relative to state deposits. Interest earned shall be credited to the petroleum storage tank
27 insurance fund.

28 4. The general administration of the fund and the responsibility for the proper operation
29 of the fund, including all decisions relating to payments from the fund, are hereby vested in a
30 board of trustees. The board of trustees shall consist of the commissioner of administration or
31 the commissioner's designee, the director of the department of natural resources or the director's
32 designee, the director of the department of agriculture or the director's designee, and eight
33 citizens appointed by the governor with the advice and consent of the senate. Three of the
34 appointed members shall be owners or operators of retail petroleum storage tanks, including one
35 tank owner or operator of greater than ~~[one hundred]~~ **fifty tanks located within the state of**
36 **Missouri**; one tank owner or operator of less than ~~[one hundred]~~ **fifty tanks located within the**
37 **state of Missouri**; and one ~~[aboveground storage tank]~~ owner or operator **of at least one**
38 **aboveground storage tank located in the state of Missouri**. One appointed trustee shall
39 represent a financial lending institution, and one appointed trustee shall represent the insurance
40 underwriting industry. One appointed trustee shall represent industrial or commercial users of
41 petroleum. The two remaining appointed citizens shall have no petroleum-related business
42 interest, and shall represent the nonregulated public at large. The members appointed by the
43 governor shall serve four-year terms ~~[except that the governor shall designate two of the original~~
44 ~~appointees to be appointed for one year, two to be appointed for two years, two to be appointed~~
45 ~~for three years and two to be appointed for four years]~~. Any vacancies occurring on the board
46 shall be filled in the same manner as provided in this section.

47 5. The board shall meet ~~[in Jefferson City, Missouri, within thirty days following August~~
48 ~~28, 1996. Thereafter, the board shall meet]~~ upon the written call of the ~~[chairman]~~ **chair** of the
49 board or by the agreement of any six members of the board. Notice of each meeting shall be
50 delivered to all other trustees in person or by registered mail not less than six days prior to the
51 date fixed for the meeting. The board may meet at any time by unanimous mutual consent.
52 There shall be at least one meeting in each quarter.

53 6. Six trustees shall constitute a quorum for the transaction of business, and any official
54 action of the board shall be based on a majority vote of the trustees present.

55 7. The trustees shall serve without compensation but shall receive from the fund their
56 actual and necessary expenses incurred in the performance of their duties for the board.

57 8. The board of trustees shall be a type III agency and **a state agency for all pertinent**
58 **purposes, including but not limited to sections 105.711 and 537.600.** The board shall
59 appoint an executive director and other employees as needed, who shall be state employees and
60 be eligible for all corresponding benefits. The executive director shall have charge of the offices,
61 operations, records, and other employees of the board, subject to the direction of the board.
62 Employees of the board shall receive such salaries and necessary expenses as shall be fixed by
63 the board.

64 9. ~~[Staff resources for the Missouri petroleum storage tank insurance fund may be~~
65 ~~provided by the department of natural resources or another state agency as otherwise specifically~~
66 ~~determined by the board. The fund shall compensate the department of natural resources or other~~
67 ~~state agency for all costs of providing staff required by this subsection. Such compensation shall~~
68 ~~be made pursuant to contracts negotiated between the board and the department of natural~~
69 ~~resources or other state agency.~~

70 ~~10.]~~ In order to carry out the fiduciary management of the fund, the board may select and
71 employ, or may contract with, persons experienced in insurance underwriting, accounting, the
72 servicing of claims and rate making, and legal counsel to defend third-party claims, who shall
73 serve at the board's pleasure. Invoices for such services shall be presented to the board in
74 sufficient detail to allow a thorough review of the costs of such services. **The board may also**
75 **enter into contingency contracts to subrogate on behalf of fund participants; such contracts**
76 **shall not be subject to section 34.378.**

77 ~~[11. At the first meeting of the board,]~~

78 **10.** The board shall elect one of its members as ~~[chairman]~~ **chair**. The ~~[chairman]~~ **chair**
79 shall preside over meetings of the board and perform such other duties as shall be required by
80 action of the board.

81 ~~[12.]~~ **11.** The board shall elect one of its members as vice ~~[chairman]~~ **chair**, and the vice
82 ~~[chairman]~~ **chair** shall perform the duties of the ~~[chairman]~~ **chair** in the absence of the latter or
83 upon the ~~[chairman's]~~ **chair's** inability or refusal to act.

84 ~~[13.]~~ **12.** The board shall determine and prescribe all rules and regulations as they relate
85 to fiduciary management of the fund, pursuant to the purposes of sections 319.100 to 319.137.
86 In no case shall the board have oversight regarding environmental cleanup standards for
87 petroleum storage tanks.

88 ~~[14.]~~ **13.** No ~~[trustee or staff]~~ member of the ~~[fund]~~ **board or its staff** shall receive any
89 gain or profit from any moneys or transactions of the fund. This shall not preclude any eligible
90 trustee from making a claim or receiving benefits from the petroleum storage tank insurance fund
91 as provided by sections 319.100 to 319.137, **provided that such a trustee shall not participate**
92 **in deliberations or decisions of the board regarding that claim.**

93 ~~[15.]~~ **14.** The board may reinsure all or a portion of the fund's liability. Any insurer who
94 sells environmental liability insurance in this state may, at the option of the board, reinsure some
95 portion of the fund's liability.

96 ~~[16.]~~ **15.** The petroleum storage tank insurance fund shall expire on December 31, 2025,
97 unless extended by action of the general assembly. After December 31, 2025, the board of
98 trustees may continue to function for the sole purpose of completing payment of claims made
99 prior to December 31, 2025. **On December 31, 2025, and each year thereafter so long as**
100 **moneys remain in the fund, the board shall report to the state treasurer an estimate of its**
101 **remaining obligations, and by January thirtieth of the succeeding year the treasurer shall**
102 **report to the general assembly the amount remaining in the fund and the board's estimate**
103 **of remaining obligations. When all claims have been paid, the board shall so report to the**
104 **treasurer, and the treasurer shall in turn report to the general assembly the amount, if any,**
105 **remaining in the fund.**

106 ~~[17.]~~ **16.** The board shall annually commission an independent financial audit of the
107 petroleum storage tank insurance fund. The board shall biennially commission an actuarial
108 analysis of the petroleum storage tank insurance fund. The results of the financial audit and the
109 actuarial analysis shall be made available to the public. The board may contract with third
110 parties to carry out the requirements of this subsection.

319.131. 1. Any owner or operator of one or more petroleum storage tanks may ~~[elect]~~
2 **apply** to participate in the petroleum storage tank insurance fund ~~[to meet the financial~~
3 ~~responsibility requirements of sections 319.114 and 414.036]~~. **Participation shall be subject**
4 **to the terms of a participation agreement issued by the board of trustees. The board may**
5 **offer more than one such form. Among the terms the board may include in such forms are**
6 **provisions authorizing the board to assign claim benefits to a successor owner. The board**
7 **also may issue special endorsements on individual participation agreements for good cause.**
8 Subject to regulations of the board of trustees, owners or operators may elect to continue their
9 participation in the fund subsequent to the transfer of their property to another party. Current or
10 former refinery sites or petroleum pipeline or marine terminals are not eligible for participation
11 in the fund. **Notwithstanding any other provision of sections 319.100 to 319.133, owners**
12 **and operators of airport hydrant systems and other underground or aboveground storage**

13 **tanks used to store and distribute fuel for railroad corporations and airline companies**
14 **shall not be eligible to participate in the fund.**

15 2. The board shall establish an advisory committee which shall be composed of insurers,
16 owners and operators of petroleum storage tanks, and other interested parties. The advisory
17 committee established pursuant to this subsection shall report to the board. The committee shall
18 monitor the fund **and its operation by the board** and recommend statutory and administrative
19 changes as may be necessary to assure efficient operation of the fund. The committee, in
20 consultation with the board and the department of commerce and insurance, shall report every
21 two years to the general assembly on the availability and affordability of the private insurance
22 market as a viable method of meeting the financial responsibilities required by state and federal
23 law in lieu of the petroleum storage tank insurance fund.

24 3. (1) Except as otherwise provided by this section, any person seeking to participate
25 in the insurance fund shall submit an application to the board of trustees and shall certify that the
26 petroleum tanks meet or exceed and are in compliance with all ~~[technical standards established~~
27 ~~by the United States Environmental Protection Agency, except those standards and regulations~~
28 ~~pertaining to spill prevention control and counter-measure plans, and rules]~~ **petroleum storage**
29 **tank regulations** established by the Missouri department of natural resources and the Missouri
30 department of agriculture. The applicant shall submit proof that the applicant has a reasonable
31 assurance of the tank's integrity. ~~[Proof of tank integrity may include but not be limited to any~~
32 ~~one of the following: tank tightness test, electronic leak detection, monitoring wells, daily~~
33 ~~inventory reconciliation, vapor test or any other test that may be approved by the director of the~~
34 ~~department of natural resources or the director of the department of agriculture.]~~ The applicant
35 shall **also** submit evidence that the applicant can ~~[meet all applicable financial responsibility~~
36 ~~requirements]~~ **pay the first ten thousand dollars of cleanup costs referenced in subsection**
37 **4** of this section.

38 (2) A creditor, specifically a person who, without participating in and not otherwise
39 primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership
40 primarily for the purpose of, or in connection with, securing payment or performance of a loan
41 or to protect a security interest in or lien on the tank or the property where the tank is located,
42 or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in
43 interest to a debtor pursuant to this section, provided that the creditor gives notice of the interest
44 to the ~~[insurance fund]~~ **board** by certified mail, return receipt requested. Part of such notice shall
45 include a copy of the lien, including but not limited to a security agreement or a deed of trust as
46 appropriate to the property. The term "successor in interest" as provided in this section means
47 a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer
48 of title to the creditor, and the term is limited to access to the insurance fund. The creditor may

cure any of the debtor's defaults in payments required by the ~~[insurance fund]~~ **board**, provided the specific real property originally qualified pursuant to this section. The creditor, or the creditor's subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific real property held as collateral for loans, guarantees or other credit, and which includes the debtor's aboveground storage tanks or underground storage tanks, or both such tanks shall provide notice to the ~~[fund]~~ **board** of any transfer of creditor to subsidiary or affiliate. Liability pursuant to sections 319.100 to 319.137 shall be confined to such creditor or such creditor's subsidiary or affiliate. A creditor shall apply for a transfer of coverage and shall present evidence indicating a lien, contractual right, or operation of law permitting such transfer, and may utilize the creditor's affiliate or subsidiary to hold legal title to the specific real property taken in satisfaction of debts. Creditors may be listed as insured or additional insured on the ~~[insurance fund]~~ **participation agreement**, and not merely as mortgagees, and may assign or otherwise transfer the debtor's rights in the insurance fund to the creditor's affiliate or subsidiary, notwithstanding any limitations in the ~~[insurance fund]~~ **participation agreement** on assignments or transfer of the debtor's rights.

(3) Any person participating in the fund shall annually submit an amount established pursuant to subsection 1 of section 319.133 which shall be deposited to the credit of the petroleum storage tank insurance fund.

4. ~~[Any person making a claim pursuant to this section and sections 319.129 and 319.133 shall be liable for the first ten thousand dollars of the cost of cleanup associated with a release from a petroleum storage tank without reimbursement from the fund. The petroleum storage tank insurance fund shall assume all costs, except as provided in subsection 5 of this section, which are greater than ten thousand dollars but less than one million dollars per occurrence or two million dollars aggregate per year. The liability of the petroleum storage tank insurance fund is not the liability of the state of Missouri. The provisions of sections 319.100 to 319.137 shall not be construed to broaden the liability of the state of Missouri beyond the provisions of sections 537.600 to 537.610 nor to abolish or waive any defense which might otherwise be available to the state or to any person. The presence of existing contamination at a site where a person is seeking insurance in accordance with this section shall not affect that person's ability to participate in this program, provided the person meets all other requirements of this section. Any person who qualifies pursuant to sections 319.100 to 319.137 and who has requested approval of a project for remediation from the fund, which request has not yet been decided upon shall annually be sent a status report including an estimate of when the project may expect to be funded and other pertinent information regarding the request.]~~

5. ~~The fund shall provide coverage for third-party claims involving property damage or bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating~~

~~in the fund at the time the release occurs or is discovered. Coverage for third-party property damage or bodily injury shall be in addition to the coverage described in subsection 4 of this section but the total liability of the petroleum storage tank insurance fund for all cleanup costs, property damage, and bodily injury shall not exceed one million dollars per occurrence or two million dollars aggregate per year. The fund shall not compensate an owner or operator for repair of damages to property beyond that required to contain and clean up a release of a regulated substance or compensate an owner or operator or any third party for loss or damage to other property owned or belonging to the owner or operator, or for any loss or damage of an intangible nature, including, but not limited to, loss or interruption of business, pain and suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive damages.~~

~~6. The fund shall, within limits specified in this section, assume costs of third-party claims and cleanup of contamination caused by releases from petroleum storage tanks. The fund shall provide the defense of eligible third-party claims including the negotiations of any settlement.~~

7.] (1) The board shall provide coverage to fund participants for the costs of cleanup associated with a release from a petroleum storage tank and third-party claims involving property damage or bodily injury arising from such release. The total liability of the petroleum storage tank insurance fund for all cleanup costs, third-party property damage, and third-party bodily injury shall not exceed one million dollars per occurrence or two million dollars in the aggregate per year. In addition to these limits, the board may provide legal defense of eligible third-party claims and may specify a limit to legal defense coverage costs in the participation agreement.

(2) The participant shall be liable for the first ten thousand dollars of cleanup costs.

(3) In no case shall coverage be provided for repair of damages to the participant's property beyond that required to contain and clean up a petroleum release, or for loss or damage to other property owned or belonging to the participant.

(4) In no case shall coverage be provided to a participant or third party for loss or damage of an intangible nature, including but not limited to loss or interruption of business, pain and suffering of any person, lost income, mental distress, loss of use of any benefit, or punitive damages.

(5) The board shall have authority to investigate and settle any third-party claim and, if legal defense coverage is provided as authorized in subdivision (1) of this subsection, may choose and employ counsel to represent a participant and defend such claims.

5. Nothing contained in sections 319.100 to 319.137 shall be construed to abrogate or limit any right, remedy, causes of action, or claim by any person sustaining personal injury or

property damage as a result of any release from any type of petroleum storage tank, nor shall anything contained in sections 319.100 to 319.137 be construed to abrogate or limit any liability of any person in any way responsible for any release from a petroleum storage tank or any damages for personal injury or property damages caused by such a release. **Nothing contained in sections 319.100 to 319.137 shall be construed to create a cause of action against the fund or the board. The provisions of sections 319.100 to 319.137 shall not be construed to broaden the liability of the state of Missouri beyond the provisions of sections 537.600 to 537.610 nor to abolish or waive any defense that might otherwise be available to the state or to any person.**

~~[8. (1) The fund shall provide moneys for cleanup of contamination caused by releases from petroleum storage tanks, the owner or operator of which is participating in the fund or the owner or operator of which has made application for participation in the fund by December 31, 1997, regardless of when such release occurred, provided that those persons who have made application are ultimately accepted into the fund. Applicants shall not be eligible for fund benefits until they are accepted into the fund. This section shall not preclude the owner or operator of petroleum storage tanks coming into service after December 31, 1997, from making application to and participating in the petroleum storage tank insurance fund.~~

~~———(2)]~~ **6.** Notwithstanding the provisions of section 319.100 ~~[and the provisions of subdivision (1) of this section]~~, the ~~[fund]~~ **board** shall provide moneys for cleanup of contamination caused by releases from petroleum storage tanks owned by school districts all or part of which are located in a county of the third classification without a township form of government and having a population of more than ten thousand seven hundred but less than eleven thousand inhabitants, and which make application for participation in the fund by August 28, 1999, regardless of when such release occurred. Applicants shall not be eligible for fund benefits until they are accepted into the fund, and costs incurred prior to that date shall not be eligible expenses.

~~[9.]~~ **7. (1) [The fund]** **Notwithstanding the provisions of this section to the contrary, the board** shall provide moneys **from the fund** for cleanup of contamination caused by releases from underground storage tanks which contained petroleum and which ~~[have been]~~ **were** taken out of use prior to December 31, 1997, provided such sites ~~[have been]~~ **were** documented by or reported to the department of natural resources prior to December 31, 1997, and provided further that the ~~[fund]~~ **board** shall make no reimbursements for expenses incurred prior to August 28, 1995. The ~~[fund]~~ **board** shall also provide moneys for cleanup of contamination caused by releases from underground storage tanks which contained petroleum and which have been taken out of use prior to December 31, 1985, if the current owner of the real property where the tanks are located purchased such property before December 31, 1985, provided such sites ~~[are]~~ **were**

reported to the fund on or before June 30, 2000. The ~~[fund]~~ **board** shall make no payment for expenses incurred at such sites prior to August 28, 1999. Nothing in sections 319.100 to 319.137 shall affect the validity of any underground storage tank fund insurance policy in effect on August 28, 1996.

(2) An owner or operator who submits a request as provided in this subsection is not required to bid the costs and expenses associated with professional environmental engineering services. The board may disapprove all or part of the costs and expenses associated with the environmental engineering services if the costs are excessive based upon comparable service costs or current market value of similar services. The owner or operator shall solicit bids for actual remediation and cleanup work as provided by rules of the board.

(3) After December 31, 2017, the current legal owner of the site shall be the responsible party for corrective action, pursuant to section 319.109, of any releases from underground storage tanks described in this subsection, provided the creditor, who is a successor in interest as provided in subdivision (2) of subsection 3 of this section, is subject to no greater or lesser responsibility for corrective action than such successor in interest would have on or before December 31, 2017. Nothing in this subdivision shall in any way be construed to alter, alleviate, or modify in any manner any liabilities that the fund has to pay for in cleaning up the site.

(4) For such cleanups, the liability of the fund is limited to nine hundred ninety thousand dollars and the person initiating the cleanup shall pay the first ten thousand dollars of cleanup costs.

~~[10.]~~ **8. (1) [The fund] Notwithstanding the provisions of this section to the contrary, the board shall provide moneys from the fund for cleanup of contamination caused by releases from aboveground storage tanks utilized for the sale of products regulated by chapter 414 which [have been] were taken out of use prior to December 31, 1997, provided such sites [have been] were documented by or reported to the department of natural resources prior to December 31, 1997, and provided further that the [fund] board shall make no reimbursements for expenses incurred prior to July 1, 1997.**

(2) After December 31, 2017, the current legal owner of the site shall be the responsible party for corrective action of any releases from aboveground storage tanks described in this subsection, provided the creditor, who is a successor in interest as provided in subdivision (2) of subsection 3 of this section, is subject to no greater or lesser responsibility for corrective action than such successor in interest would have on or before December 31, 2017. Nothing in this subdivision shall in any way be construed to alter, alleviate, or modify in any manner any liabilities that the fund has to pay for in cleaning up the site.

191 **(3) For such cleanups, the liability of the fund is limited to nine hundred ninety**
192 **thousand dollars and the person initiating the cleanup shall pay the first ten thousand**
193 **dollars of cleanup costs.**

194 **9. The board shall provide by regulation for the appeal of decisions denying, in**
195 **whole or in part, requests by fund participants for payment from the fund. Any**
196 **deliberations conducted and votes taken on such an appeal shall be closed to the applicant**
197 **and the public. Once a final decision is rendered, that decision shall be made available to**
198 **the participant and the public.**

199 **10. (1) The following records are not public records, as such term is defined in**
200 **section 610.010, and are not available for public examination except to the extent that the**
201 **board determines that disclosure is in the best interest of the fund or of the public:**

- 202 **(a) Applications for participation;**
203 **(b) Individual claim reserve estimates;**
204 **(c) An applicant's or participant's financial information;**
205 **(d) Claims adjusters' reports; and**
206 **(e) Communications regarding fund participants' liabilities or claim settlement**
207 **negotiations.**

208 **(2) Should the board determine that records containing proprietary or confidential**
209 **information regarding an applicant or participant should be disclosed, the board shall so**
210 **notify the applicant or participant no less than ten days before making any such disclosure.**

211 **(3) The provisions of this subsection shall not limit the board's authority to disclose**
212 **records to other state agencies to assist those agencies in performing their regulatory**
213 **functions.**

319.133. 1. The board shall, in consultation with the advisory committee established
2 pursuant to subsection 2 of section 319.131, establish, by rule, the amount which each owner or
3 operator who participates in the fund shall pay annually into the fund, but such amount shall not
4 exceed the limits established in this section.

5 2. Each participant shall annually pay an amount which shall be at least one hundred
6 dollars per year but not more than five hundred dollars per year for any tank, as established by
7 the board by rule.

8 3. No new registration fee is required for a change of ownership of a petroleum storage
9 tank.

10 4. The board ~~[shall]~~ **may** establish procedures where persons ~~[owning fifty or more~~
11 ~~petroleum storage tanks]~~ may pay any fee established pursuant to subsection 1 of this section in
12 installments.

13 5. All rules applicable to the former underground storage tank insurance fund not
14 inconsistent with the provisions of sections 319.100 to 319.137 shall apply to the petroleum
15 storage tank insurance fund as of August 28, 1996.

16 6. The board may require any new applicant, who has not previously held private
17 insurance or other form of financial responsibility for the petroleum storage tank for which
18 application to the fund is made, to conduct a site assessment before participating in the fund.
19 The board also may require such new applicants to pay a surcharge per year per tank from the
20 date the tank was eligible for coverage under the fund, provided that each year's surcharge shall
21 not exceed the surcharge that was actually in effect for that particular year.

22 7. Any rule or portion of a rule, as that term is defined in section 536.010, that is created
23 under the authority delegated in this section shall become effective only if it complies with and
24 is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section
25 and chapter 536 are nonseverable, and if any of the powers vested with the general assembly
26 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule
27 are subsequently held unconstitutional, then the grant of rulemaking authority and any rule
28 proposed or adopted after August 28, 2008, shall be invalid and void.

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